THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.579 of 2010

ORDER:

Assailing the judgment dated 02.12.2009 in Crl.A.No.172 of 2009 on the file of the Court of learned III Additional Sessions Judge, Guntur, modifying the conviction and sentence imposed by the judgment dated 06.04.2009 in C.C.No.49 of 2008 on the file of the Court of learned VI Additional Judicial Magistrate of First Class, Guntur, the petitioner/de facto complainant filed the present criminal revision case under Section 397 r/w.401 of the Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C.").

2. The revision case was admitted on 11.06.2010.

3. The facts leading to file the present criminal revision case are that:

i). On 30.04.2007 at 10.00 p.m., P.Ws.1 and 3 were going to the fields of Narakoduru on their cycles and the accused and his brother followed them from their behind with a knife upto the fields and attacked on P.W.1, threw him down and stabbed him on his back,

left shoulder and neck. As a result, he sustained bleedings injuries.

ii). For the said act, on the statement of P.W.1, P.W.7 S.I of Police, Chebrolu Police Station, registered a case in Cr.No.74 of 2007 and after completion of investigation filed charge sheet against the accused under Section 326 of IPC.

4. The said charge sheet was taken on file and numbered as C.C.No.49 of 2008 on the file of the Court of learned VI Additional Judicial Magistrate of First Class, Guntur. After full pledged trial, the trial Court found the accused guilty of the offence under Section 326 of Indian Penal Code (hereinafter referred to as "IPC") and sentenced him to undergo simple imprisonment for a period of one (1) year and also pay fine of Rs.500/-, in default to suffer simple imprisonment for one (1) month.

5. Aggrieved by the same, the 1st respondent/accused preferred an appeal, *vide* Crl.A.No.172 of 2009, before the Court of learned III Additional Sessions Judge, Guntur, and after appreciating the entire material on record, the first Appellant Court found the guilt of the accused for the offence under Section 324 of IPC instead of Section 326 of IPC and thereby,

modified the sentence of one (1) year simple imprisonment and fine of Rs.500/- to that of fine of Rs.5,000/-, in default of payment of fine, shall undergo simple imprisonment for four (4) months.

6. Against the said judgment of the first Appellate Court, the present criminal revision case was preferred by the petitioner/de facto complainant.

7. Heard Sri A.E.R.Naidu, learned counsel representing Sri Raja Reddy Koneti, learned counsel for the petitioner/de facto complainant, Sri V.Jithender Rao, learned counsel for the 1st respondent/accused and Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor for the 2nd respondent-State.

8. Now the point that arises for determination in this revision is "whether there is any manifest error of law or flagrant miscarriage of justice in the judgment rendered by the first Appellate Court in Crl.A.No.172 of 2009?"

9. It is settled law that revision is a discretionary power and not a right of the party. The Revisional Court should not re-appreciate the evidence or interfere with the findings of fact, unless they are perverse or unreasonable. More so, it is also settled that a revision is not maintainable if an appeal lies but

has not been filed by the State. However, the Revisional Court can entertain a revision petition by the other party who is not entitled to appeal or by a stranger who is aggrieved by the order of the Court. But, Revisional Court can exercise its power if the appellate court has acted without jurisdiction or in excess of jurisdiction or has failed to exercise its jurisdiction. These aspects have to be looked into and thereafter only to consider to what extent the petition is maintainable under revision.

10. Admittedly, the present revision is filed by the de facto complainant/P.W.1 by name K.Chintaiah.

11. Learned counsel for the petitioner/de facto complainant submits that the learned Sessions Judge failed to consider the evidence of P.W.6 Doctor, who treated the petitioner and found that the nature of injuries is grievous and thereby, modification of sentence under Section 324 of IPC is illegal; that the injuries of P.W.1 is not disputed by the accused; that the appellate Court did not give any reason for imposing fine only, which is violation of statutory mandate and ought to have confirmed the judgment of the trial Court.

12. On the other hand, learned counsel for the 1st respondent/accused submits that the accused took a defence before the first appellate Court that there is no consistency in

the evidence of prosecution witnesses. As per the version in the F.I.R., P.Ws.1 and 3 were going to the fields, accused chased him, armed with a knife, accused beat P.W.3, then he went to a side and after going to some distance, P.W.1 was pushed down by the accused and caused injuries. But, as per the statement before police, P.W.1 denied that, it was mentioned in Ex.D.1 that on 30.04.2007 at about 10.00 p.m., while he was going on cycle by taking P.W.3, the incident was occurred. This inconsistency goes to the root of the prosecution case.

13. He further submits that as per evidence of P.W.1, when himself and P.W.3 were going to the fields on separate cycles, accused stopped P.W.3 and on his threat P.W.3 left from that place by running. Whereas, P.W.3 in his evidence deposed that about three (3) years back at 09.00 a.m., himself and P.W.1 were going to their fields on cycle and at that time there was pelting of stones towards them and due to fear he left from the said place by running. This is another inconsistency between the testimony of P.W.1 and P.W.3.

14. He further submits that admittedly, there is no direct witness to the incident and there is no corroboration to the evidence of P.W.1. Further, the radiologist was not examined, no X-ray films were produced and in the absence of radiologist and

production of X-ray films, it cannot be accepted that the injuries said to be received by P.W.1 will attract the offence under Section 326 of IPC, thereby, prosecution failed to prove the said offence.

15. Per contra, Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor for the 2nd respondent-State, submits that the de facto complainant is alleged to have illicit intimacy with the wife of the accused; that the incident of causing injuries to P.W.1 by the accused is very much consistent; that he identified the accused, who stabbed him and caused injuries; that proved the said injuries by P.W.6 Dr.J.V.Narasimha Rao and his evidence is very much consistent that the injuries are grievous in nature.

16. On the above said contentions, the fist appellate Court at paragraph No.14 of the judgment held that the presence of P.W.1 at the place of incident is consistent in view of the evidence of P.Ws.1 and 3. P.W.4, who is wife of P.W.1, also deposed that there was no dispute with the family of the accused since one year, but admitted illicit intimacy of P.W.1 with the wife of the accused. It was also held at paragraph No.15 that accused pushed him down and stabbed on his back, left shoulder and neck.

17. P.W.6 Dr.J.V.Narasimha Rao, who gave wound certificate, observed that there is a deep lacerated injury over mid back and deep lacerated injury over left side of neck. He also found fracture of spinous on T4 vertibra and it is described as grievous in nature. Further mentioned in Ex.P.3 wound certificate that injuries Nos.1 and 2 are described as simple in nature, whereas injury No.2 is also described as grievous.

18. The learned Sessions Judge in appeal opined that X-ray report of injured only showing that he suffered grievous hurt, but no such report was placed on record and that non-examination of radiologist, who took x-rays and gave report goes to show that the prosecution could not prove the offence under Section 326 of IPC, but it should be consider as only 324 of IPC and thereby, the first appellate Court modified the conviction and sentence under Section 324 of IPC instead of 326 of IPC and sentenced the accused to pay fine of Rs.5,000/-. For which, the petitioner/de facto complainant filed this revision.

19. Herein this case, in the absence of examination of radiologist and production of X-rays films, can a wound of the person called as grievous injury. No doubt, those injuries which cause severe body pain and make the person unable to follow his daily work for a period of twenty days is a grievous injury.

Injuries that render organs incapable of performing their daily function is a grievous injury.

20. No doubt, there cannot be a presumption that the grievous hurt was caused without formal proof of the fact of fracture. The fact of existence of fracture cannot be diagnosed and certified in absence of proof of x-ray plates, unless the fact of fractured bones is perceivable barely of perception of naked eyes and sheerly by clinical examination, its being vivid and palpable. Therefore, proof of x-ray plates was necessary particularly, the prosecution must prove the injury within the meaning of Section 320 of IPC and if the injury is a fracture, the prosecution must ordinarily prove the fracture by adducing radiological evidence. Suffice it to refer the observations of Hon'ble Supreme Court reported in ***Faizan Ahmed Abdul Wahab Shah v. The State of Maharashtra***[1], that "a medical certificate shown fracture by symbol, it was necessary for the prosecution to prove the fracture by bringing evidence of x-ray examination and supporting testimony of radiologist".

21. In another judgment of Hon'ble Supreme Court reported in ***P.Johnson v. State of Kerala***[2], held that "even regarding the conviction brought under Section 326 there is no legal

[1] 2014 ALL MR (Crl) 4841
[2] 1998 SCC Online Ker 477

evidence to fix the criminal liability. Section 320 IPC defines grievous hurt. Fracture comes under this Section. Non production of the X-ray report and non-examination of the doctor who took the X-ray are sufficient to deduce that the criminal liability either under Section 325 or 326 IPC is not established. This flaw is also a stronger one shaking the case of the prosecution".

22. This Court also referred the same aspect in previous orders that in-order to found the guilt of the accused under Section 326 of IPC to prove the nature of the injuries, the radiologist examination and production of x-ray files is mandatory. Under these circumstances, this Court is of the opinion that there are no grounds to interfere with the well-articulated judgment of the first Appellate Court as the said judgment neither perverse nor there is any manifest error of law or a flagrant miscarriage of justice in modifying the sentence.

23. Even otherwise, no revision shall be entertained at the instance of the de facto complainant/victim against the order of acquittal, in a case where no appeal is preferred and victim is relegated to file an appeal. In this connection, it is relevant to refer a judgment of the Hon'ble Supreme Court reported in

Joseph Stephen v. Santhanasamy[3], wherein at paragraph No.8 held that "whether in exercise of the revisional jurisdiction under Section 401 Cr.P.C., the High Court can convert a finding of acquittal into one of conviction and what is the procedure to be followed by the High Court, as such, the said issue is now not *res integra"*.

24. The APEX Court perused its judgment reported in ***K.Chinnaswamy Reddy v. State of Andhra Pradesh***[4], and observed that "at that stage the revisional court stops short of finding the accused guilty and passing sentence on him by ordering a retrial. What order should be passed by the High Court in a revision application against the order of acquittal, while exercising the revisional jurisdiction, has been dealt with and considered in paragraph No.11" of the said judgment.

25. Ultimately, in ***Joseph Stephen case*** (referred to supra), the Hon'ble Supreme Court observed that on account of misreading of evidence or perverse appreciation of evidence, nothing prevents the High Court to take an independent view and the High Court may remit the matter to the trial Court and even direct for retrial. However, if the order of acquittal is passed by the first appellate Court, in that case, the High Court

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[3] 2022 13 SCC 115
[4] 1962 SCC Online SC 32

has two options available, (i) to remit the matter to the first appellate Court to rehear the appeal; or (ii) in an appropriate case remit the matter to the trial Court for retrial in such a situation the procedure has to be followed as per the judgment in ***Chinnaswamy Reddy case*** (referred to supra).

26. Further, the High Court taken the matter under Section 401(5) Cr.P.C. may treat the application for revision as petition of appeal and deal with the same accordingly is concerned, firstly the High Court has to pass a judicial order to treat the application for revision as petition of appeal. The High Court has to pass a judicial order because sub-section (5) of Section 401 Cr.P.C. provides that if the High Court is satisfied that such revision application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do.

27. Coming to the case on hand, having regard to the above discussion, this Court does not find any such perversity or manifest error of law or miscarriage of justice to interfere with the well-articulated judgment of the first appellate Court and there are no merits in this revision. Thereby, the present criminal revision is liable to be dismissed.

28. In the result, the Criminal Revision Case is dismissed confirming the judgment dated 02.12.2009 in Cr.A.No.172 of 2009 on the file of the Court of learned III Additional Sessions Judge, Guntur.

Interim orders granted earlier if any, stand vacated.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE V.SRINIVAS

Date: 26.12.2023
Krs

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THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.579 of 2007

DATE: 26.12.2023

Krs

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

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THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.579 of 2010

Between:
Koduru Chintaiah, S/o.Samuel,
Aged about 38 years, R/o.Nara Koduru,
Chebrolu Mandal, Guntur District.

... Petitioner

AND

1.Koduru Elia @ Ramaraju, S/o.Nagaiah,
Aged about 37 years, R/o.Nara Koduru,
Chebrolu Mandal, Guntur District.

2.The State of of Andhra Pradesh,
Rep.by its Public Prosecutor,
High Court of A.P., Hyderabad. .. Respondents

DATE OF JUDGMENT PRONOUNCED: 26.12.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE V.SRINIVAS

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No

3. Whether Their ladyship/Lordship wishes to see the fair copy of the Judgment? Yes/No

JUSTICE V.SRINIVAS

* **HON'BLE SRI JUSTICE V.SRINIVAS**

+ CRIMINAL REVISION CASE NO.579 OF 2010

% 26.12.2023

Koduru Chintaiah, S/o.Samuel,
Aged about 38 years, R/o.Nara Koduru,
Chebrolu Mandal, Guntur District

.. Petitioner

Vs.

$ 1. Koduru Elia @ Ramaraju, S/o.Nagaiah,
Aged about 37 years, R/o.Nara Koduru,
Chebrolu Mandal, Guntur District.

2.The State of of Andhra Pradesh,
Rep.by its Public Prosecutor,
High Court of A.P., Hyderabad.

.. Respondents

! Counsel for the Petitioner: Sri A.E.R.Naidu, learned Counsel appearing on behalf of Sri Raja Reddy Koneti, learned counsel for the petitioner.

Counsel for Respondent No.1: Sri V.Jithender Rao

Counsel for Respondent No.2: Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor.

<Gist :

>Head Note:

? Cases referred:

1. 2014 ALL MR (Crl) 4841
2. 1998 SCC Online Ker 477
3. 2022 (13) SCC 115
4. 1962 SCC Online SC 32

This Court made the following: